

MEMO ENDORSED



City of Cleveland
Justin M. Bibb, Mayor

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DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/25/24

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September 25, 2024

By ECF

The Honorable Valerie Caproni
United States District Court
40 Foley Square, Room 240
New York, New York 10007

Re: Opposition to Stay
In re the Marshall Project, Inc., 1:24-mc-00309, related to
Montague v. Cleveland, N.D. Ohio, Case No. 1:22-cv-01878

Dear Judge Caproni:

My name is Matthew Aumann and I am an assistant law director for the City of Cleveland. The Marshall Project asks this Court to stay ruling on the pending motion to quash. (Ltr., ECF No. 26). Because delay here would also delay the underlying suit, this Court should deny the requested stay.

As this Court knows, the motion to quash relates to an employment discrimination case in the Northern District of Ohio. (*Montague*, ECF No. 1). In that case, Judge Boyko ordered Plaintiff Vincent Montague to comply with his discovery obligations by a date certain. (*Montague*, Minutes, July 24, 2024). When Montague failed to comply, Cleveland moved to dismiss for lack of prosecution. (*Montague*, Mot., ECF No. 20).

Cleveland's motion had the intended effect. Soon after, Montague provided discovery responses. (*Montague*, Joint Status Report, ECF No. 24). The Parties then asked Judge Boyko to extend the case deadlines. (*Id.*, PageID # 314). This requested relief was based in part on the pending motion to quash here. (*Id.*, PageID # 313). Judge Boyko granted the relief. (Non-Document Order dated August 29, 2024). Fact discovery was continued until November. (*Id.*). The Court also set a dispositive motion deadline and asked for mediation dates. (*Id.*).



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Because Judge Boyko extended discovery deadlines after Cleveland's motion to dismiss, the tea leaves suggest the motion will be addressed with the eventual summary judgment motion. *See, e.g., Sweigert v. Goodman*, No. 18-CV-8653 (VEC), 2022 WL 168080, at *1 (S.D.N.Y. Jan. 19, 2022) (Caproni, J.) (deciding motion for summary judgment concurrently with other pending motions). Frankly, the motion's prospects look dim.

The Marshall Project now asks this Court to stay proceedings based on a motion to dismiss that has been overcome by events and will remain on the docket for some time. *See, e.g., Shoemaker v. Mansfield City Sch. Dist. Bd. of Educ.*, No. 1:13CV2505, 2015 WL 2195065, at *4 (N.D. Ohio May 11, 2015) (Boyko, J.) (deciding motion for summary judgment and sanctions, among others, at once). Cleveland told the Marshall Project as much.

A stay here would be inefficient. Cleveland asked and received a continuance based in-part in the motion to quash pending here. So should this Court stay resolution until Judge Boyko acts, then the underlying suit grinds to a stop too.¹

Because the Marshall Project's proposed stay would create a doom loop of stayed cases, this Court should deny the request to stay its decision on the pending motion to quash. That said, should the underlying suit be resolved before this Court acts, then Cleveland will promptly notify this Court.

Respectfully submitted,

s/ Matthew Aumann

Matthew Aumann
Assistant Director of Law

¹ The Marshall Project not only opposed a stay earlier (Ltr., ECF No. 17), but this cross-jurisdictional snafu could have been avoided had the motion to quash been filed in the Northern District of Ohio.

Movant TMP's request to hold its motion to quash in abeyance pending Cleveland's motion to dismiss in the underlying litigation is DENIED. Cleveland filed its motion to dismiss in the underlying action for lack of prosecution on August 5, 2024, *Montague v. Cleveland*, No. 22-cv-01878 (N.D. Ohio) at Dkt. 20. Mr. Montague then filed his opposition to Cleveland's motion on August 16, 2024, *see id.* at Dkt. 23. The parties submitted a joint status report on August 22, 2024, seeking an extension of the fact discovery deadline, *see id.* at Dkt. 24, which the Court granted. Based on this activity, as Cleveland noted in its opposition, the "motion to dismiss [] has been overcome by events," and as such, "the motion's prospects look dim." As a result, the Court sees no need to hold TMP's motion in abeyance.

SO ORDERED.

9/25/24



HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE